

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

WALTER BRYANT, JR.

PLAINTIFF

V.

CIVIL ACTION NO. 3:22-CV-751-KHJ-MTP

CAPTAIN CRUZ, et al.

DEFENDANTS

ORDER

Before the Court is the [35] Report and Recommendation of United States Magistrate Judge Michael T. Parker. The Report recommends denying Defendants' [21] Motion to Dismiss, [24] Motion for Joinder, and [28] Motion for Summary Judgment. The Court adopts the Report's findings and recommendations.

Pro se Plaintiff Walter Bryant, Jr., is incarcerated in a state prison. *See* Compl. [1]. His Section 1983 suit alleges that prison officials used excessive force and then denied him medical care for his injuries. *See id.* Defendant Nurse Pinter moved to dismiss on exhaustion grounds, and Defendant Captain Cruz later joined in that motion. [21]; [24]. Cruz then moved for summary judgment on exhaustion grounds. [28].

The Report recommends denying the motion to dismiss (and for joinder therein) because Bryant "did not plead that he failed to exhaust available administrative remedies." [35] at 4. The Report also recommends denying the motion for summary judgment because "Cruz has not established beyond all peradventure that Plaintiff failed to exhaust available remedies." *Id.* at 5. Finally,

the Report recommends that “Defendants be ordered to produce Plaintiff’s ARP file and the applicable ARP procedures to Plaintiff within 30 days and that the Defendants be granted leave to reassert a motion for summary judgment on exhaustion grounds within 30 days.” *Id.*

When no party objects to a Magistrate Judge’s report, the Court need not review it de novo. *See* 28 U.S.C. § 636(b)(1). Instead, the Court can apply the clearly erroneous, abuse-of-discretion, and contrary-to-law standard of review. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Defendants did not object to the Report, and the time to do so has passed. The Court finds that the Report is not clearly erroneous or contrary to law. So the Court adopts the Report as the opinion of this Court.

The Court adopts the [35] Report and Recommendation of United States Magistrate Judge Michael T. Parker. The Court thus DENIES Defendant Nurse Pinter’s [21] Motion to Dismiss and Defendant Captain Cruz’s [24] Motion for Joinder. The Court also DENIES without prejudice Defendant Captain Cruz’s [28] Motion for Summary Judgment. And the Court orders Defendants to produce Plaintiff’s Administrative Remedy Program file and the applicable Administrative Remedy Program procedures to Plaintiff within 30 days. Defendants may file another motion for summary judgment on exhaustion grounds within 30 days.

SO ORDERED, this 29th day of November, 2023.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE